

Chapter 2

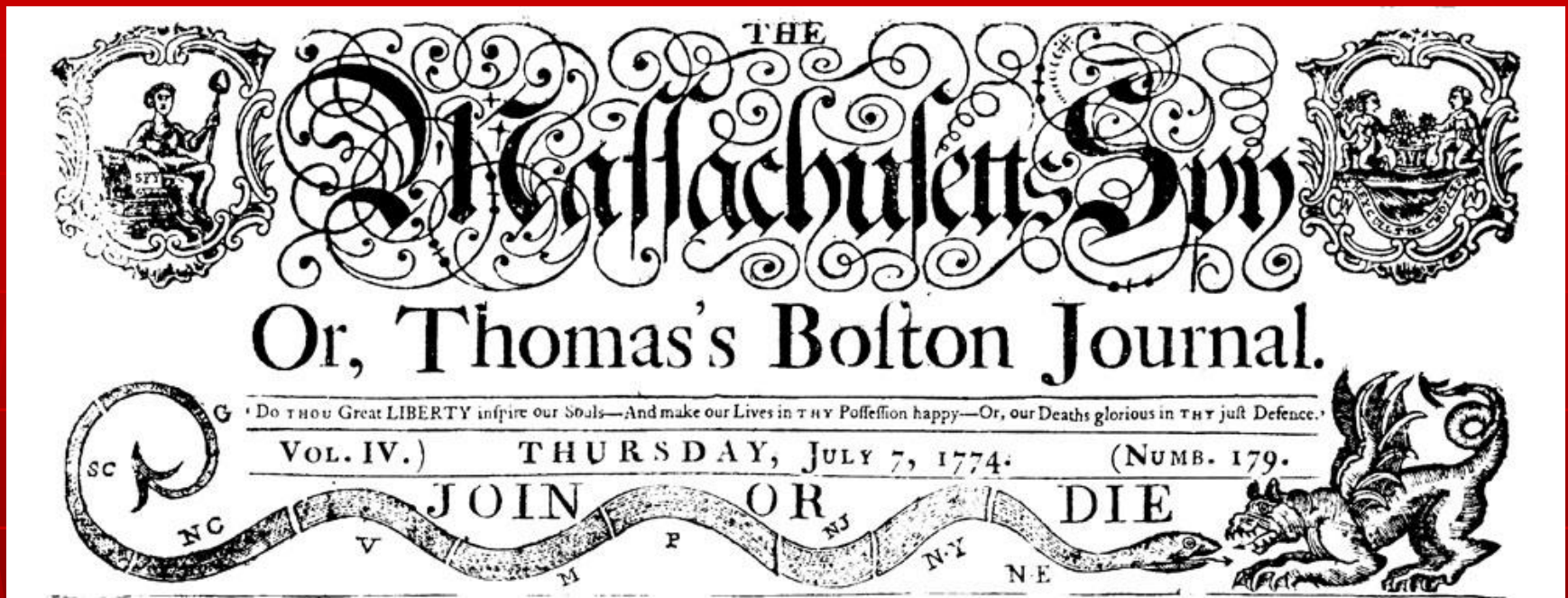
The Constitution

■ WHO GOVERNS?

1. What is the difference between a democracy and a republic?
2. What branch of government has the greatest power?

■ TO WHAT ENDS?

1. Does the Constitution tell us what goals the government should serve?
2. Whose freedom does the Constitution protect?



LC-DIG-ppmsca-02949/Library of Congress

Even before the Revolutionary War, many felt some form of union would be necessary if the rebellious colonies were to survive. In 1774, the Massachusetts Spy portrayed the colonies as segments of a snake that must “Join or Die.” p. 20

The Problem of Liberty

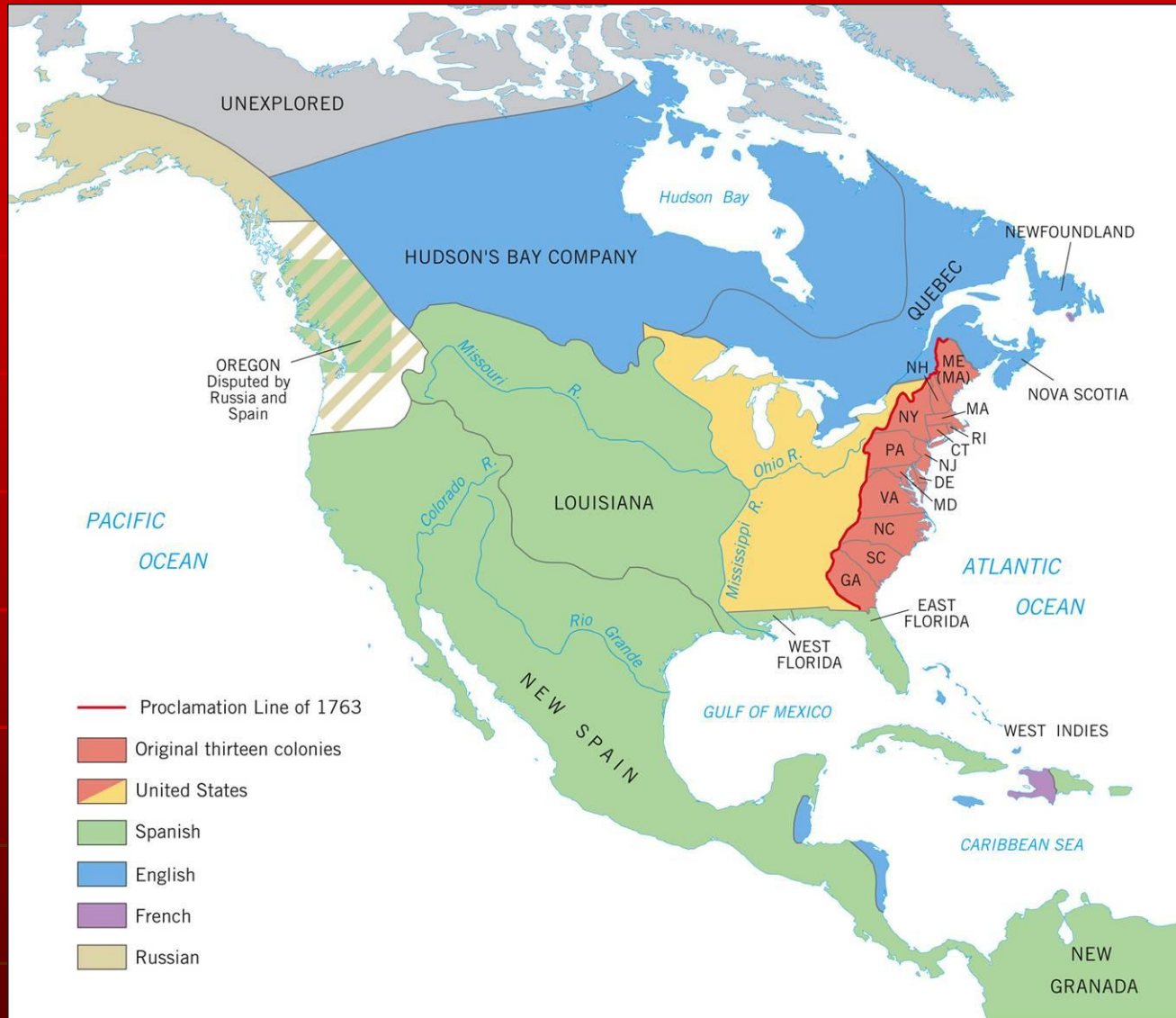
- The Colonial Mind
 - Men will seek power because they are ambitious, greedy and easily corrupted
- The Real Revolution
- Weaknesses of the Confederation
 - Articles of Confederation 1781



Lafayette College Art Collection

The American colonists' desire to assert their liberties led in time to a deep hostility toward British government, as when these New Yorkers toppled a statue of King George III, melted it down, and used the metal to make bullets. p. 21

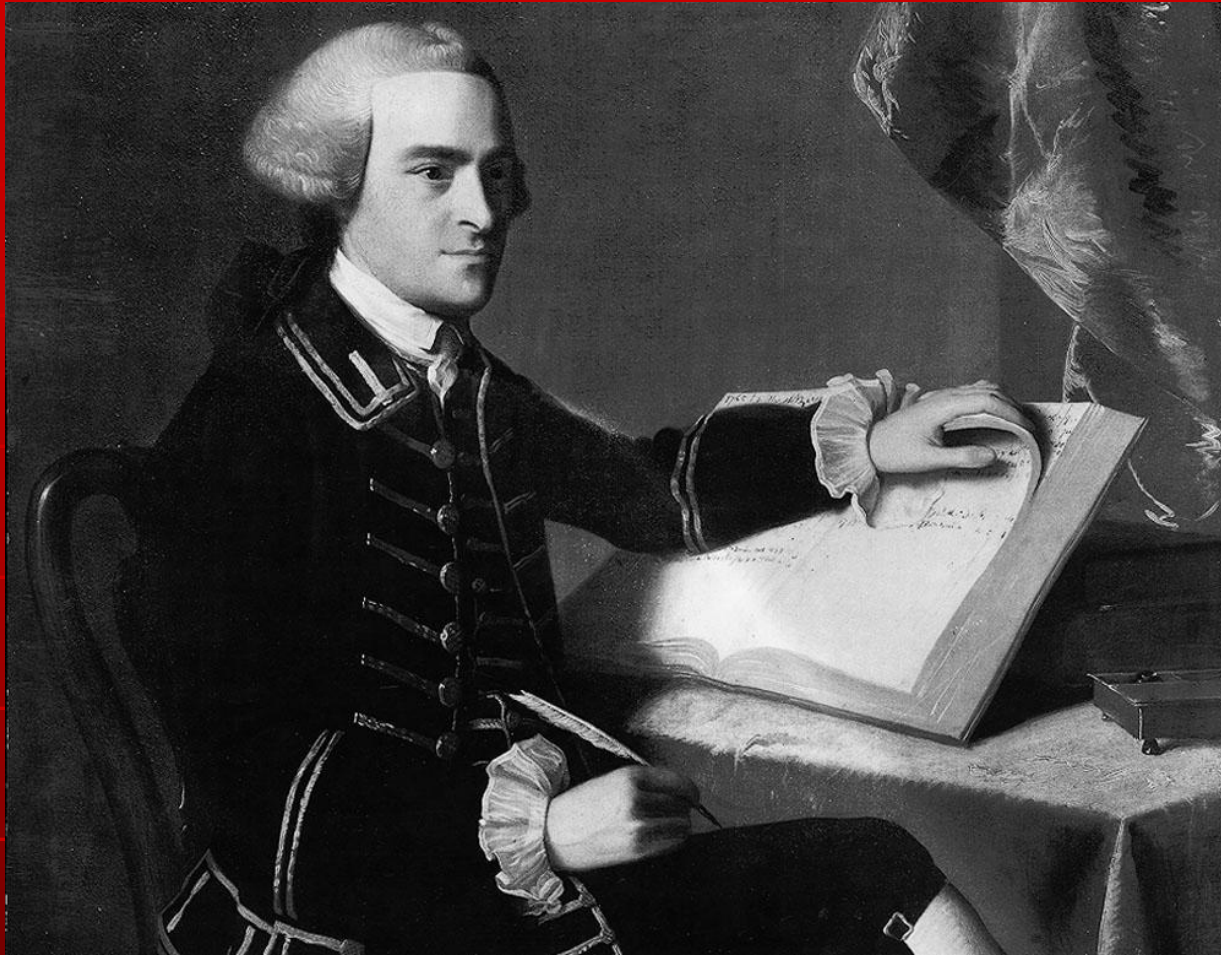
North America in 1787, p. 22



ARTICLES
OF
CONFEDERATION
AND
PERPETUAL UNION
BETWEEN THE
STATES
OF

NEW-HAMPSHIRE, MASSACHUSETTS-BAY, RHODE-ISLAND
AND PROVIDENCE PLANTATIONS, CONNECTICUT, NEW-
YORK, NEW-JERSEY, PENNSYLVANIA, DELAWARE, MARY-
LAND, VIRGINIA, NORTH-CAROLINA, SOUTH-CAROLINA
AND GEORGIA.

p. 23



Library of Congress

John Hancock was proud to have signed the Declaration of Independence but thought so little of the presidency under the Articles of Confederation that he never bothered to accept the job. p. 24



The Free Library of Philadelphia

The presiding officer at the Constitutional Convention was George Washington (1732–1799). He participated just once in the debates, but the effect of his presence was great. He was a national military hero, and it was generally expected that he would be the nation's first president. p. 25

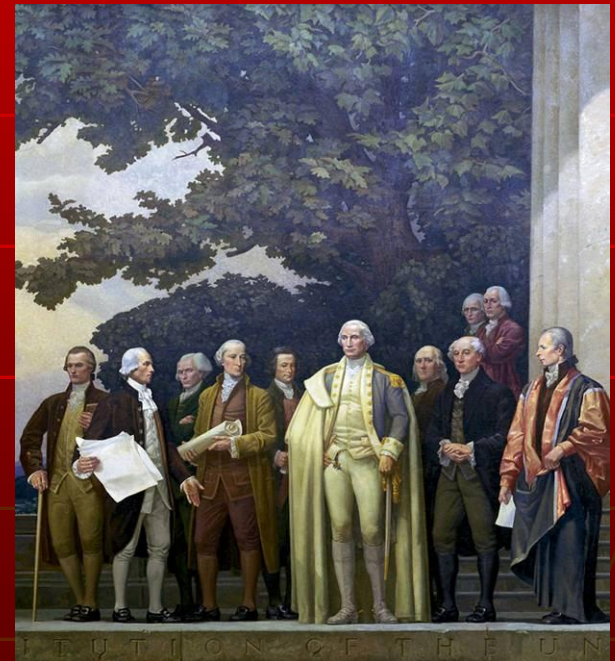


Bettmann/Corbis

Shays's Rebellion in western Massachusetts in 1786–1787 stirred deep fears of anarchy in America. The ruckus was put down by a hastily assembled militia, and the rebels were eventually pardoned. p. 26

The Constitutional Convention

- The Lessons of Experience
 - State Constitutions
 - Shay's Rebellion
- The Framers
 - 55 delegates, RI did not send a delegate



Courtesy of the National Archives and Records Administration, Washington, D.C.

The Challenge

- *The Virginia Plan*—proposal to create a strong national government
- *The New Jersey Plan*—proposal to create a weak national government
- *The Compromise*
 - popularly elected house based on state population
 - state elected Senate, with two members for each state

The Constitution and Democracy

- Republican Form of Government
 - Key Principles
 - Federalism
 - Enumerated powers
 - Reserved powers
 - Concurrent powers
- Government of Human Nature
 - Separation of powers
 - Checks and balances



How Things Work

Checks and Balances

The Constitution creates a system of *separate* institutions that *share* powers. Because the three branches of government share powers, each can (partially) check the powers of the others. This is the system of **checks and balances**. The major checks possessed by each branch are listed below.

Congress

1. Can check the president in these ways:
 - a. By refusing to pass a bill the president wants
 - b. By passing a law over the president's veto
 - c. By using the impeachment powers to remove the president from office
 - d. By refusing to approve a presidential appointment (Senate only)
 - e. By refusing to ratify a treaty the president has signed (Senate only)
2. Can check the federal courts in these ways:
 - a. By changing the number and jurisdiction of the lower courts
 - b. By using the impeachment powers to remove a judge from office
 - c. By refusing to approve a person nominated to be a judge (Senate only)

The President

1. Can check Congress by vetoing a bill it has passed
2. Can check the federal courts by nominating judges

The Courts

1. Can check Congress by declaring a law unconstitutional
2. Can check the president by declaring actions by him or his subordinates unconstitutional or not authorized by law

In addition to these checks specifically provided for in the Constitution, each branch has informal ways of checking the others. For example, the president can try to withhold information from Congress (on the grounds of "executive privilege"), and Congress can try to get information by mounting an investigation.

The exact meaning of the various checks is explained in Chapter 13 on Congress, Chapter 14 on the presidency, and Chapter 16 on the courts.

The Constitution and Liberty

- The Antifederalist View
- Need for a Bill of Rights
- The Constitution and Slavery



Ratification of the Federal
Constitution by State
Conventions, 1787-1790, p. 32

The F Æ D E R A L I S T: No. X.

To the People of the State of New-York.

AMONG the numerous advantages promised by a well constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. The friend of popular governments, never finds himself so much alarmed for their character and fate, as when he contemplates their propensity to this dangerous vice. He will not fail therefore to set a due value on any plan which, without violating the principles to which he is attached, provides a proper cure for it. The instability, injustice and confusion introduced into the public councils, have in truth been the mortal diseases under which popular governments have every where perished; as they continue to be the favorite and fruitful topics from which the adversaries to liberty derive their most specious declamations. The valuable improvements made by the American Constitutions on the popular models, both ancient and modern, cannot certainly be too much admired; but it would be an unwarrantable partiality, to contend that they have as effectually obviated the danger on this side as was wished and expected. Complaints are every where heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty; that our governments are too unstable; that the public good is disregarded in the conflicts of rival parties; and that measures are too often decided, not according to the rules of justice, and the rights of the minor party; but by the superior force of an interested and over-bearing majority. However anxiously we may

p. 35



How Things Work

The Bill of Rights

The First Ten Amendments to the Constitution Grouped by Topic and Purpose

Protections Afforded Citizens to Participate in the Political Process

Amendment 1: Freedom of religion, speech, press, and assembly; the right to petition the government.

Protections Against Arbitrary Police and Court Action

Amendment 4: No unreasonable searches or seizures.

Amendment 5: Grand jury indictment required to prosecute a person for a serious crime.

No “double jeopardy” (being tried twice for the same offense).

Forcing a person to testify against himself or herself prohibited.

No loss of life, liberty, or property without due process.

Amendment 6: Right to speedy, public, impartial trial with defense counsel and right to cross-examine witnesses.

Amendment 7: Jury trials in civil suits where value exceeds \$20.

Amendment 8: No excessive bail or fines, no cruel and unusual punishments.

Protections of States’ Rights and Unnamed Rights of People

Amendment 9: Unlisted rights are not necessarily denied.

Amendment 10: Powers not delegated to the United States or denied to states are reserved to the states.

Other Amendments

Amendment 2: Right to bear arms.

Amendment 3: Troops may not be quartered in homes in peacetime.

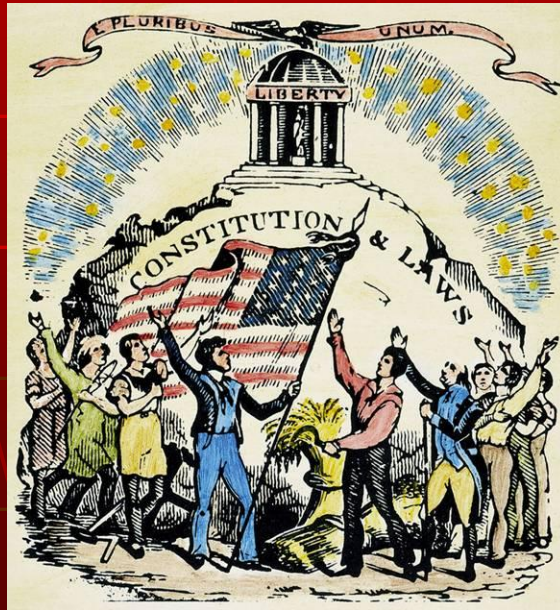


Chicago Historical Society

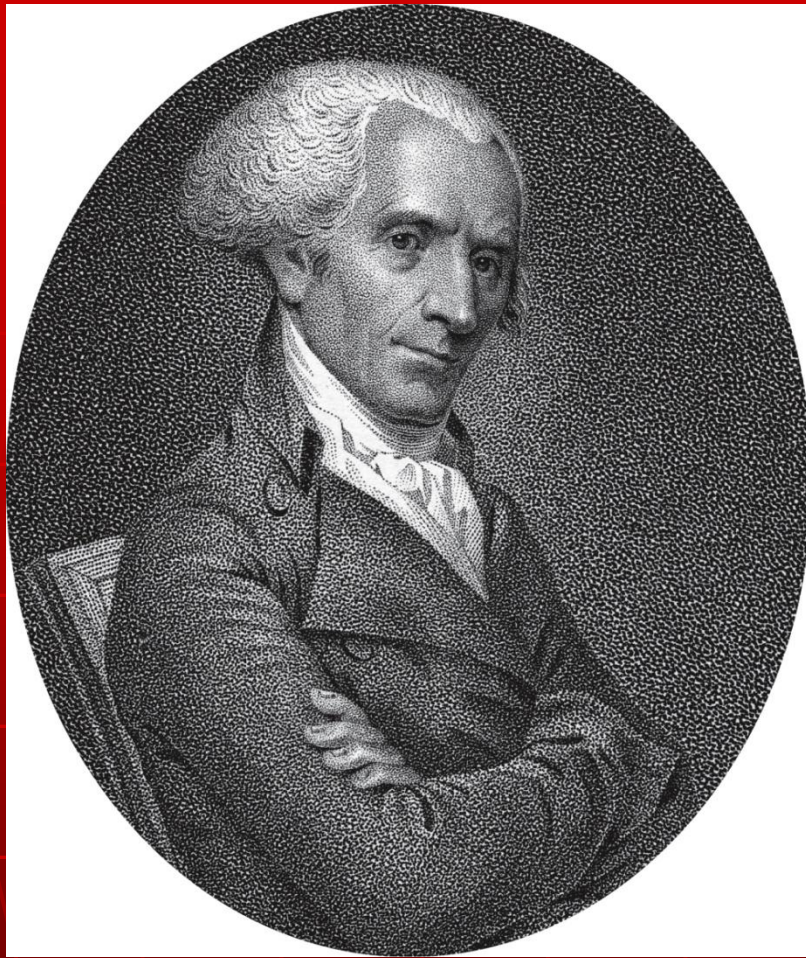
The Constitution was silent about slavery, and so buying and selling slaves continued for many years, p. 38

The Motives of the Framers

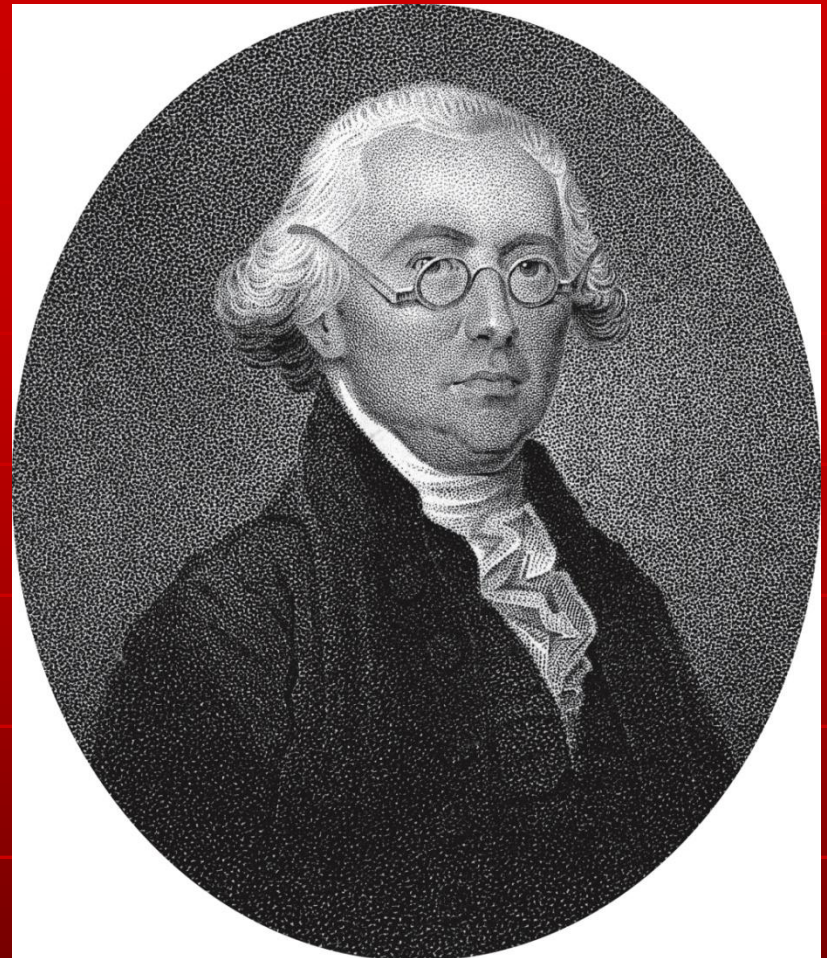
- Economic Interests
- The Constitution and Equality



This late-eighteenth-century cartoon shows the enthusiasm many people had for their new Constitution, p. 39



Bettmann/CORBIS



Hulton Archive/Hulton Archive/Getty Images

Elbridge Gerry (left, 1744–1814) was a wealthy Massachusetts merchant and politician who participated in the convention but refused to sign the Constitution. James Wilson (right, 1742–1798) of Pennsylvania, a brilliant lawyer and terrible businessman, was the principal champion of the popular election of the House. Near the end of his life, he was jailed repeatedly for debts incurred as a result of his business speculations. p. 40

Constitutional Reform: Modern Views

- Reducing the Separation of Powers
- Making the System Less Democratic
 - *Line-item veto*

WHO IS RIGHT?



How Things Work

Ways of Amending the Constitution

Under Article V, there are two ways to *propose* **amendments** to the Constitution and two ways to *ratify* them.

To Propose an Amendment

1. Two-thirds of both houses of Congress vote to propose an amendment, *or*
2. Two-thirds of the state legislatures ask Congress to call a national convention to propose amendments.

To Ratify an Amendment

1. Three-fourths of the state legislatures approve it, *or*
2. Ratifying conventions in three-fourths of the states approve it.

Some Key Facts

- Only the first method of proposing an amendment has been used.
- The second method of ratification has been used only once, to ratify the Twenty-first Amendment (repealing Prohibition).
- Congress may limit the time within which a proposed amendment must be ratified. The usual limitation has been seven years.
- Thousands of proposals have been made, but only 33 have obtained the necessary two-thirds vote in Congress.
- Twenty-seven amendments have been ratified.
- The first 10 amendments, ratified on December 15, 1791, are known as the Bill of Rights.

WHAT WOULD YOU DO?

MEMORANDUM

To: *Elizabeth Anthony, Arkansas state senate majority leader*

From: *George Morris, chief of staff*

Subject: *Proposal for a New Constitutional Convention*

In the 1990s, Arkansas and several other states approved term limits for their members of Congress, but the Supreme Court ruled in 1995 that states do not have this authority. Now term-limit advocates are pursuing a broader strategy, calling for states to approve legislation that would require Congress to consider several amendment proposals, including term limits and abolishing the electoral College to permit the direct popular election of the president. The Arkansas General Assembly passed such a bill last week, and several senators in your party have declared their support.

WHAT WOULD YOU DO?

Arguments for:

1. Since the Twenty-second Amendment restricts presidents to two terms, that members of Congress should face similar limits.
2. Term limits will ensure that national leaders do not become career politicians.
3. The public favors the direct popular election of the president; this constitutional convention would make possible abolishing the electoral College.

WHAT WOULD YOU DO?

Arguments against:

1. Limiting members of Congress to two terms would increase the power of lobbyists, congressional staffers, and administrative officials.
2. The Electoral College encourages a two-party system; a direct popular vote for the president would require runoff elections if no candidate won a majority.
3. The Constitutional Convention of 1787 was held in secret and involved only a few dozen people; today it would be heavily covered by the press and involve hundreds, perhaps thousands of people. No one knows what changes it might make.

WHAT WOULD YOU DO?

Your decision:

Favor legislation?

Oppose legislation?